

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON**

DONALD ALLEN GOSNEY,

Plaintiff,

v.

MIKE GOWER, *et al.*,

Defendants.

Case No. 6:16-cv-1072-SB

ORDER

Michael H. Simon, District Judge.

United States Magistrate Judge Stacie F. Beckerman issued Findings and Recommendation in this case on May 9, 2018. ECF 152. Judge Beckerman recommended that the Court deny Plaintiff's motion for partial summary judgment (ECF 94) and grant Defendants' motion for partial summary judgment (ECF 125).

Under the Federal Magistrates Act ("Act"), the Court may "accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate." 28 U.S.C. § 636(b)(1). If a party files objections to a magistrate's findings and recommendations, "the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." *Id.*; Fed. R. Civ. P. 72(b)(3).

For those portions of a magistrate's findings and recommendations to which neither party has objected, the Act does not prescribe any standard of review. *See Thomas v. Arn*, 474 U.S. 140, 152 (1985) ("There is no indication that Congress, in enacting [the Act], intended to require a district judge to review a magistrate's report to which no objections are filed."); *United States v. Reyna-Tapia*, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc) (holding that the court must review de novo magistrate's findings and recommendations if objection is made, "but not otherwise"). Although in the absence of objections no review is required, the Act "does not preclude further review by the district judge[] *sua sponte* . . . under a *de novo* or any other standard." *Thomas*, 474 U.S. at 154. Indeed, the Advisory Committee Notes to Fed. R. Civ. P. 72(b) recommend that "[w]hen no timely objection is filed," the Court review the magistrate's recommendations for "clear error on the face of the record."

Plaintiff timely filed an objection (ECF 154), to which Defendants responded. ECF 155. Plaintiff objects to the portion of Judge Beckerman's recommendation finding that Defendants are entitled to summary judgment on Plaintiffs' first claim for relief. Specifically, Plaintiff argues that Defendant Gruenwald was obligated, in November 2014, to present a request for Plaintiff to undergo hip surgery to the Oregon Department of Corrections Therapeutic Level of Care Committee ("TLOC").

The Court agrees with Judge Beckerman's conclusion that the undisputed facts do not support a finding that Defendant Gruenwald acted with deliberate indifference to Plaintiff's serious medical need. As Judge Beckerman found, there is no evidence that Dr. Carpenter communicated an *immediate* or *urgent* need for surgery to Dr. Gruenwald or other Department of Corrections personnel that Defendant Gruenwald ignored. Plaintiff argues that Dr. Carpenter's note that "this should be presented to the treatment committee" constituted a definitive answer to

Defendant Gruenwald's inquiry about the proper time frame for a hip replacement, sufficient for a jury to find that Defendant Gruenwald's subsequent failure to recommend surgery to TLOC until two months later constituted deliberate indifference. Plaintiff also notes that Defendant Gruenwald made her own note on Plaintiff's file, after receiving Dr. Carpenter's report, that she would present Plaintiff's case to TLOC. Plaintiff argues that Defendant Gruenwald then did not do so. Defendant Gruenwald did, however, present Plaintiff's case to TLOC shortly thereafter; in November 2014, Defendant Gruenwald requested a prescription for pain medication for Plaintiff, but not surgery. For the reasons stated in Judge Beckerman's Findings and Recommendation, there is insufficient evidence to support a finding that Defendant Gruenwald acted with deliberate indifference to Plaintiff's needs in doing so.

For those portions of Judge Beckerman's Findings and Recommendation to which neither party has objected, this Court follows the recommendation of the Advisory Committee and reviews those matters for clear error on the face of the record. No such error is apparent.

The Court **ADOPTS** Judge Beckerman's Findings and Recommendation, ECF 152. Plaintiff's motion for partial summary judgment (ECF 94) is DENIED, and Defendants' motion for partial summary judgment (ECF 125) is GRANTED. Plaintiff's first, second, and third claims for relief are dismissed with prejudice.

IT IS SO ORDERED.

DATED this 1st day of June, 2018.

/s/ Michael H. Simon
Michael H. Simon
United States District Judge